



WISCONSIN DEPARTMENT OF NATURAL RESOURCES

ANNOTATED MODEL FLOODPLAIN ORDINANCE

Revised December 2005

MODEL ORDINANCE PROVISIONS	BACKGROUND / NOTES	CODE / LAW
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**1.0 STATUTORY AUTHORIZATION,
FINDING OF FACT, STATEMENT OF
PURPOSE, TITLE AND GENERAL
PROVISIONS**

1.1 STATUTORY AUTHORIZATION

NR 116.01

This ordinance is adopted pursuant to the authorization in ss. 61.35 and 62.23, for villages and cities; 59.69, 59.692, and 59.694 for counties; and the requirements in s. 87.30, Stats.

NOTE: These are the statutory authorities for a municipality to adopt the ordinance. The term “municipality” as used in this ordinance means the city, village or county governmental unit adopting and administering this ordinance. This ordinance is designed to meet the requirements of s. 87.30, Stats.

1.2 FINDING OF FACT

NR 116.01

Uncontrolled development and use of the floodplains and rivers of this municipality would impair the public health, safety, convenience, general welfare and tax base.

1.3 STATEMENT OF PURPOSE

NR 116.01

This ordinance is intended to regulate floodplain development to:

NOTE: The purpose of this ordinance is to protect life, health and property and reduce flood losses. These regulations do not prohibit development but are intended to protect it from the effects of flooding.

- (1) Protect life, health and property;
- (2) Minimize expenditures of public funds for flood control projects;
- (3) Minimize rescue and relief efforts undertaken at the expense of the taxpayers;
- (4) Minimize business interruptions and other economic disruptions;

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(5) Minimize damage to public facilities in the floodplain;

(6) Minimize the occurrence of future flood blight areas in the floodplain;

(7) Discourage the victimization of unwary land and homebuyers;

(8) Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and

(9) Discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.

NOTE: Introduces the concept of "practicable alternatives" to encourage property owners to consider alternative development sites outside of the floodplain.

1.4 TITLE

This ordinance shall be known as the Floodplain Zoning Ordinance for _____, Wisconsin.

1.5 GENERAL PROVISIONS**(1) AREAS TO BE REGULATED**

NR 116.06

~~Areas regulated by this ordinance include all areas within the limits of the municipality that would be covered by the "regional flood" (defined in s. 10.1) and include "floodplain islands" (defined in s. 10.1) designated on the official map where emergency rescue and relief routes would be inundated by the regional flood.~~

NOTE: All Wisconsin communities with a Special Flood Hazard Area (SFHA) which is derived from a federal Flood Insurance Study (FIS) must use the Base Flood Elevation (BFE) for floodplain ordinance administration. For floodplains that are identified by other studies, the Regional Flood Elevation (RFE) can be used. Annexed property remains under county regulations until the community adopts appropriate regulations for the annexed area.

This ordinance regulates all areas that would be covered by the regional flood or base flood.

NOTE: The term "base flood" has been added.

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Note: Base flood elevations (BFE) are derived from the flood profiles in the Flood Insurance Study (FIS). Regional flood elevations (RFE) may be derived from other studies. Areas covered by the base flood are identified as A-Zones on the Flood Insurance Rate Map (FIRM).

(2) OFFICIAL MAPS & REVISIONS

NR 116.06
NR 116.09
44 CFR 60.3(b)

The boundaries of all floodplain districts are designated as floodplains or A-Zones on the maps listed below and the revisions in the (municipality name) Floodplain Appendix. Any change to the base flood elevations in the Flood Insurance Study or on the Flood Insurance Rate Map must be reviewed and approved by the DNR and FEMA before it is effective. No changes to regional flood elevations on non-FEMA maps shall be effective until approved by the DNR. These maps and revisions are on file in the office of the (municipal office), (municipality name). If more than one map or revision is referenced, the most current approved information shall apply.

NOTE: This ordinance adopts floodplain regulations for areas designated on the "official map" in s. 1.5(2) below. For all communities participating in the National Flood Insurance Program, the "official map" must include all approved panels from the community's FIS. These maps cannot be changed without proper review and approval by both the DNR and FEMA. As newer maps are developed or other regulations apply, additional areas - such as dams, storage areas, coastal areas – must be regulated.

OFFICIAL MAPS: Based on the FIS (*modify and delete below examples as appropriate*)

44 CFR Part 65

(a) Flood Insurance Rate Map (FIRM), panel number 550470 0001 C, dated January 1, 1982; and Flood Boundary and Floodway Map (FBFW), panel number 550470 0001 B, dated April 2, 1979, with corresponding profiles that are based on the Flood Insurance Study (FIS) dated October 1978.

NOTE: This section must include the most current floodplain data which has been reviewed and approved by the DNR and FEMA. Where there has been an FIS or other detailed floodplain study conducted, the elevations in the flood profiles must be used for all permit decisions.

Approved by: The DNR and FEMA

Where more than one map (or other data) exists, the most current approved data should be used for zoning decisions. While a community can grant or deny permits based on approved data not yet adopted, it is advisable to adopt first.

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW**OFFICIAL MAPS: Based on other studiesNote: These are examples of other maps a community may adopt.

(b) 100-Year Dam Failure Floodplain Map, dated March 4, 1993, prepared by ABC Engineering.

Approved by: The DNR and FEMA

(c) Silver Creek Floodplain Map, dated August 10, 1993, prepared by ABC Engineering.

Approved by: The DNR and FEMA

(d) Floodplain Study Appendix: All DNR- and FEMA-approved floodplain maps, flood profiles, floodway data tables, regional or base flood elevations and other information located in the Appendix of this ordinance. The community shall provide the most up to date Appendix to the DNR and FEMA regional offices.

Note: It is advisable to use an appendix in communities which receive regular updated engineering information, such as bridge replacements and other public works projects in floodplain areas.

(3) ESTABLISHMENT OF DISTRICTS

NR 116.11

The regional floodplain areas are divided into three districts as follows:

(a) The Floodway District (FW) is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters.

(b) The Floodfringe District (FF) is that portion of the floodplain between the regional flood limits and the floodway.

(c) The General Floodplain District (GFP) is those areas that have been or may be covered by floodwater during the regional flood.

Note: A companion model flood storage ordinance contains these three districts plus the Flood Storage District.

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW****(4) LOCATING FLOODPLAIN BOUNDARIES**

NR 116.10

Discrepancies between boundaries on the official floodplain zoning map and actual field conditions shall be resolved using the criteria in paragraphs (a) or (b) below. If a significant difference exists, the map shall be amended according to s. 8.0. The zoning administrator can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether or not a map amendment is required. The zoning administrator shall be responsible for documenting actual pre-development field conditions and the basis upon which the district boundary was determined and for initiating any map amendments required under this section. Disputes between the zoning administrator and an applicant over the district boundary line shall be settled according to s. 7.3(3) and the criteria in (a) and (b) below.

(a) If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.

(b) Where flood profiles do not exist, the location of the boundary shall be determined by the map scale, visual on-site inspection and any information provided by the Department.

Note: Where the flood profiles are based on established base flood elevations from a FIRM, FEMA must also approve any map amendment pursuant to s. 8.1 (6).

Note: While it is the local zoning officials responsibility to correctly interpret the available maps, Department Regional staff can provide technical assistance if needed.

NOTE: Any proposed map amendment that revises a flood elevation or floodplain boundary which is derived from the FIS must be reviewed and approved by FEMA before it can become effective.

(5) REMOVAL OF LANDS FROM FLOODPLAIN

NR 116.18

Compliance with the provisions of this ordinance

NOTE: If FEMA has revised the map or exempted the structure

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shall not be grounds for removing land from the floodplain unless it is filled at least two feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to s. 8.0. ~~To remove flood insurance requirements, FEMA must revise the Flood Insurance Rate Map or issue a Letter of Map Amendment or Revision.~~

from flood insurance requirements, zoning regulations still apply until the municipality formally amends the map. The property owner should always be advised of the requirements of the NFIP.

Note: This procedure does not remove the requirements for the mandatory purchase of flood insurance. The property owner must contact FEMA to request a Letter of Map Change (LOMC).

NOTE: This note explains the NFIP provisions for removing the flood insurance requirements for a property in the floodplain.

(6) COMPLIANCE

NR 116.20

Any development or use within the areas regulated by this ordinance shall be in compliance with the terms of this ordinance and other applicable local, state, and federal regulations.

(7) MUNICIPALITIES AND STATE AGENCIES REGULATED

NR 116.02

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if s. 13.48(13), Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation is exempt when s. 30.2022, Stats., applies.

Note: While state agencies are not always required to comply with local zoning ordinances, it is state policy for all agencies to comply to the maximum extent feasible.

(8) ABROGATION AND GREATER RESTRICTIONS

s. 59.692(2)(b)Stat.

(a) This ordinance supersedes all the provisions of any municipal zoning ordinance enacted under ss. 59.69, 59.692 or 59.694 for counties; s. 62.23 for

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cities; or s. 61.35 for villages; or s. 87.30, Stats., which relate to floodplains. If another ordinance is more restrictive than this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

(b) This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. If this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

(9) INTERPRETATION

In their interpretation and application, the provisions of this ordinance are the minimum requirements liberally construed in favor of the governing body and are not a limitation on or repeal of any other powers granted by the Wisconsin Statutes. If a provision of this ordinance, required by ch. NR 116, Wis. Adm. Code, is unclear, the provision shall be interpreted in light of the standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

(10) WARNING AND DISCLAIMER OF LIABILITY

The flood protection standards in this ordinance are based on engineering experience and scientific research. Larger floods may occur or the flood height may be increased by man-made or natural causes. This ordinance does not imply or guarantee that non-floodplain areas or permitted floodplain uses will be free from flooding and flood damages. Nor does this ordinance create liability on the part of, or a cause of action against, the municipality or

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any officer or employee thereof for any flood damage that may result from reliance on this ordinance.

(11) SEVERABILITY

Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

(12) ANNEXED AREAS FOR CITIES AND VILLAGES

s. 59.692(7)Stats.

The _____ County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements of ch. NR 116, Wis. Adm. Code and the National Flood Insurance Program (NFIP). These annexed lands are described on the municipality's official zoning map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the municipal zoning administrator. All plats or maps of annexation shall show the regional flood elevation and the location of the floodway.

NOTE: Any annexed land shall be governed by the provisions of the county floodplain ordinance until the municipality adopts a floodplain zoning ordinance that meets both DNR and FEMA minimum standards.

(13) GENERAL DEVELOPMENT STANDARDS

44 CFR 60.3 a) 3

The community shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be designed or modified and adequately anchored to

NOTE: This sub-section represents the minimum NFIP development requirements for building in a floodplain.

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prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with materials resistant to flood damage; be constructed by methods and practices that minimize flood damages; and be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Subdivisions shall be reviewed for compliance with the above standards. All subdivision proposals (including manufactured home parks) shall include regional flood elevation and floodway data for any development which meets the subdivision definition of this ordinance.

2.0 GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN DISTRICTS

2.1 HYDRAULIC AND HYDROLOGIC ANALYSES

NOTE: The zoning administrator must determine if the development will obstruct flow, causing an increase in flood height, according to s. 3.3(1) for floodway uses, and for any floodfringe developments large enough to warrant analysis. The zoning administrator must deny permits for any development which will cause an increase in flood height of 0.01 foot or greater.

NR 116.12
NR 116.13
NR 116.14

Permitted uses in the floodway which cause an increase of 0.01 foot or greater in flood height require amendments to the profile and map to show this increase. Uses not permitted can only be allowed if the site is properly filled and contiguous to lands outside the floodplain, the map is amended and the site is rezoned..

Section 3.3 lists the standards for development in floodway areas. Development is defined in s. 10.1 as “any manmade change to improved or unimproved real estate, including but not limited to the construction or repair of buildings, structures or accessory structures...” It also includes such nonstructural activities as mining, dredging, filling, grading, paving, excavation or drilling operations or the deposition or extraction of materials. Structures

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designed for human habitation are expressly prohibited because of the high danger to human life due to higher velocities and increased depths of moving water within this district. Public utilities, streets and bridges must be floodproofed and should be designed so as not to cause an increase in flood heights. If increases are caused, then the provisions of s. 8.2 must be applied. Fill placed within the floodway must be protected against erosion and must not be placed in the channel unless all necessary state and federal permits have been obtained from both the Department and the U.S. Army Corps of Engineers.

(1) Except as allowed in sub. (3) below, no floodplain development shall:

(a) Obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, increasing regional flood height; or

(b) Increase regional flood height due to floodplain storage area lost, which equals or exceeds 0.01 foot.

(2) The zoning administrator shall deny permits if it is determined the proposed development will obstruct flow or increase regional flood heights 0.01 foot or more, based on the officially adopted FIRM or other adopted map, unless the provisions of sub. (3) are met.

(3) Obstructions or increases equal to or greater than 0.01 foot may only be permitted if amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with s. 8.0. ~~and only if the cumulative effect of the proposed development will not increase the regional flood height more than 1.0 foot for the hydraulic reach of the stream unless a waiver is secured from FEMA for the 1.0 foot~~

FEMA does not provide waivers for increasing flood heights more than 1.0 feet, so this provision was removed from the model. A note was added to remind communities that both the DNR and FEMA must approve any changes in flood profiles.

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~~maximum increase~~

Note: This section refers to obstructions or increases in base flood elevations as shown on the officially adopted FIRM or other adopted map. Any such alterations must be reviewed and approved by FEMA and the DNR.

2.2 WATERCOURSE ALTERATIONS

No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the local official has notified in writing all adjacent municipalities, the Department and FEMA regional offices and required the applicant to secure all necessary state and federal permits. The flood carrying capacity of any altered or relocated watercourse shall be maintained.

As soon as is practicable, but not later than six months after the date of the watercourse alteration or relocation, the zoning administrator shall notify FEMA of the changes by submitting appropriate technical or scientific data in accordance with NFIP guidelines that shall be used to revise the FIRM, risk premium rates and floodplain management regulations as required.

2.3 CHAPTER 30, 31, WIS. STATS., DEVELOPMENT

Development which requires a permit from the Department, under chs. 30 and 31, Wis. Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may only be allowed if the necessary permits are obtained and amendments to the floodway lines, water surface profiles, BFE's established in the FIS, or other data from the officially adopted FIRM or other floodplain zoning maps or the floodplain zoning ordinance are made

NOTE: All watercourse alterations in a FEMA-mapped floodplain must be submitted to FEMA for possible revisions to the FIRM and other documents.

44 CFR 60.3(b)
Ch. 30 Stats.

NOTE: A reminder to communities that any revisions to the FIS are only permitted if the proper amendments are made.

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according to s. 8.0.

**2.4 PUBLIC OR PRIVATE
CAMPGROUNDS**

44 CFR 60.3 c)14

NR 116.12(2)(b)

Public or private campgrounds shall have a low flood damage potential and shall meet the following provisions:

NOTE: These campground standards were developed in consultation with FEMA staff and represent the minimum requirements of chapter NR 116 and the FEMA regulations.

- (1) The campground is approved by the Department of Health and Family Services.
- (2) A land use permit for the campground is issued by the zoning administrator.
- (3) The character of the river system and the elevation of the campground is such that a 72-hour warning of an impending flood can be given to all campground occupants.
- (4) There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedures for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation.
- (5) This agreement shall be for no more than one calendar year, at which time the agreement shall be reviewed and updated - by the officials identified in sub. (4) - to remain in compliance with all applicable regulations, including those of the state department of health and family services and all other applicable regulations.
- (6) Only camping units are allowed.

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(7) The camping units may not occupy any site in the campground for more than 180 consecutive days, at which time the camping unit must be removed from the floodplain for a minimum of 24 hours.

(8) All camping units that remain on site for more than 30 days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit for a period not to exceed 180 days and shall ensure compliance with all the provisions of this section.

(9) The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section.

(10) All camping units that remain in place for more than 180 consecutive days must meet the applicable requirements in either s. 3.0 or s. 4.0 for the floodplain district in which the structure is located.

(11) The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued.

(12) All service facilities, including but not limited to refuse collection, electrical service, natural gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation.

3.0 FLOODWAY DISTRICT (FW)

3.1 APPLICABILITY

This section applies to all floodway areas on the floodplain zoning maps and those identified pursuant to s. 5.4.

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW****3.2 PERMITTED USES**

NR 116.12(2)

The following open space uses are allowed in the floodway district and the floodway areas of the general floodplain district, if

- they are not prohibited by any other ordinance;
- they meet the standards in s. 3.3 and 3.4; and
- all permits or certificates have been issued according to s. 7.1:

(1) Agricultural uses, such as: farming, outdoor plant nurseries, horticulture, viticulture and wild crop harvesting.

(2) Nonstructural industrial and commercial uses, such as loading areas, parking areas and airport landing strips.

(3) Nonstructural recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap and skeet activities, hunting and fishing areas and hiking and horseback riding trails, subject to the fill limitations of s. 3.3(4).

(4) Uses or structures accessory to open space uses, or classified as historic structures that comply with ss. 3.3 and 3.4.

Note: Structures which may be permitted must either be accessory to a open space use – playground equipment, tennis courts, lighting, signs, etc. – or be functionally dependent on a waterfront location – boat ramps, material loading facilities, etc.

(5) Extraction of sand, gravel or other materials that comply with s. 3.3(4).

(6) Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas,

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culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with chs. 30, 31, Stats.

(7) Public utilities, streets and bridges that comply with s. 3.3(3).

3.3 STANDARDS FOR DEVELOPMENTS IN FLOODWAY AREAS

NR 116.12

(1) GENERAL

(a) Any development in floodway areas shall comply with s. 2.0 and have a low flood damage potential.

NR 116.12 (2)

(b) Applicants shall provide the following data to determine the effects of the proposal according to s. 2.1:

1. A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or

NR 116.07

2. An analysis calculating the effects of this proposal on regional flood height.

(c) The zoning administrator shall deny the permit application if the project will increase flood elevations upstream or downstream 0.01 foot or more, based on the data submitted for par. (b) above.

NR 116.12(1)(a)

(2) **STRUCTURES**: Structures accessory to permanent open space uses or functionally dependent on a waterfront location may be allowed by permit if the structures comply with the following criteria:

NR 116.12(2)(a)

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(a) The structures is not designed for human habitation and does not have a high flood damage potential;

(b) it must be anchored to resist flotation, collapse, and lateral movement;

(c)

(e) mechanical and utility equipment must be elevated or flood proofed to or above the Regional Flood Elevation; and

(f) it must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the Regional Flood.

(3) Public utilities, streets and bridges may be allowed by permit, if:

NR 116.12(2)(d)

(a) Adequate floodproofing measures are provided to the flood protection elevation; and

~~Construction does not increase the regional flood height according to s. 2.1, except where the water surface profiles, floodplain zoning maps and floodplain zoning ordinance are amended to reflect such changes.~~

(b) Construction meets the development standards of s. 2.1.

NOTE: This section was rewritten to clarify that the standards in s. 2.1 must be met.

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(4) Fill or deposition of materials may be allowed by permit, if:

(a) The requirements of s. 2.1 are met;

(b) No material is deposited in the navigable channel unless a permit is issued by the Department pursuant to ch. 30, Stats., and a permit pursuant to s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and the other requirements of this section are met;

(c) The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading; and

(d) The fill is not classified as a solid or hazardous waste material.

NR 116.12(1) (g)

3.4 PROHIBITED USES

All uses not listed as permitted uses in s. 3.2 are prohibited, including the following uses:

NR 116.12(1)

(1) Habitable structures, structures with high flood damage potential, or those not associated with permanent open-space uses;

(2) Storing materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;

(3) Uses not in harmony with or detrimental to uses permitted in the adjoining districts;

(4) Any private or public sewage systems, except

Note: Department guidance is available on the placement of

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portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and ch. COMM 83, Wis. Adm. Code.

portable latrines in floodway areas.

(5) Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and chs. NR 811 and NR 812, Wis. Adm. Code;

(6) Any solid or hazardous waste disposal sites;

(7) Any wastewater treatment ponds or facilities, except those permitted under s. NR 110.15(3)(b), Wis. Adm. Code;

(8) Any sanitary sewer or water supply lines, except those to service existing or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.

4.0 FLOODFRINGE DISTRICT (FF)**4.1 APPLICABILITY**

This section applies to all floodfringe areas shown on the floodplain zoning maps and those identified pursuant to s. 5.4.

4.2 PERMITTED USES

Any structure, land use, or development is allowed in the floodfringe district if the standards in s. 4.3 are met, the use is not prohibited by this or any other ordinance or regulation and all permits or certificates specified in s. 7.1 have been issued.

NR 116.13(1)

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All of the provisions of s. 2.1 shall apply. In addition, the following requirements shall apply according to the use requested.

NR 116.13

(1) **RESIDENTIAL USES:** Any habitable structure, including a manufactured home, which is to be erected, constructed, reconstructed, altered, or moved into the floodfringe area, shall meet or exceed the following standards;

NR 116.13(2)

(a) The elevation of the lowest floor, excluding the basement or crawlway, shall be at or above the flood protection elevation on fill. The fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. The Department may authorize other floodproofing measures if the elevations of existing streets or sewer lines makes compliance impractical and the Board of Adjustment/Appeals grants a variance;

Note: If the placement of fill is impractical, the municipality should contact the Department Regional floodplain staff to discuss alternative floodproofing measures which could be implemented.

(b) The basement or crawlway floor may be placed at the regional flood elevation if it is floodproofed to the flood protection elevation. No basement or crawlway floor is allowed below the regional flood elevation;

NOTE: Par. (b) allows floodproofed basements below the flood protection elevation, but not lower than the RFE. If no profiles have been published, a case-by-case analysis must be conducted to determine the RFE before the development can be permitted. Section 7.3(4) requires that the applicant be informed that, due to NFIP requirements, flood insurance premiums will increase if a structure is built below the RFE, since insurance rates are based on the lowest floor elevation compared to the RFE. The least expensive flood insurance rates are for structures that have their lowest floor constructed two feet or more above the RFE.

(c) Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in par. (d).

NOTE: Par. (c) requires dryland access to the structure during the regional flood for wheeled rescue and relief vehicles.

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(d) In developments where existing street or sewer line elevations make compliance with par. (c) impractical, the municipality may permit new development and substantial improvements where access roads are at or below the regional flood elevation, if:

1. The municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or
2. The municipality has a natural disaster plan approved by Wisconsin Emergency Management and the Department.

(2) ACCESSORY STRUCTURES OR USES:

NOTE: Par. (d) permits development, even if dryland access can't be provided, if emergency services can be provided during the regional flood, or if the community has a department-approved natural disaster plan for flooding. If neither option can be met, no residential or commercial development can be allowed.

NOTE: This section has been revised to meet FEMA minimums. It applies to an accessory structure or use that is not connected to the principle structure or use. The accessory structure must be incidental to the principle use of the property, structure or building and subject to the size and cost restrictions indicated. Only those structures which are not associated with a high degree of flood damage potential are allowed. An addition is not an accessory structure. All additions to residential and commercial structures must be elevated on fill or floodproofed to the flood protection elevation, according to s. 4.3(2).

NR 116.13(3)

(a) Except as provided in par.(b), an accessory structure which is not connected to a principal structure shall be constructed with its lowest floor at or above the Regional Flood Elevation.

(b) An accessory structure which is not connected to the principal structure and which is less than 600 square feet in size and valued at less than \$10,000 may be constructed with its lowest floor no more than two feet below the regional flood elevation,

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provided that it is subject to flood velocities of no more than two feet per second, and that it meets all of the provisions of ss. 3.3 (2) (a), (b), (c), (d), (e), (f), (g) and 4.3 (6) below.

(3) **COMMERCIAL USES:** Any commercial structure which is erected, altered or moved into the floodfringe area shall meet the requirements of s. 4.3(2). Subject to the requirements of sub. (6), storage yards, surface parking lots and other such uses may be placed at lower elevations ~~subject to the requirements of sub. (3) and (6), unless~~ if an adequate warning system exists to protect life and property.

NOTE: This section has been rewritten for clarity and to emphasize that only surface parking lots are eligible for the lesser flood protection standards.

NR 116.13(4)

(4) **MANUFACTURING AND INDUSTRIAL USES:** Any manufacturing or industrial structure which is erected, altered or moved into the floodfringe area shall be protected to the flood protection elevation using fill, levees, floodwalls, or other flood proofing measures in s. 7.5. Subject to the requirements of sub. (5), storage yards, surface parking lots and other such uses may be at lower elevations if an adequate warning system exists to protect life and property. ~~Less protection, compatible with the criteria in sub. (3) and (6), may be allowed for storage yards, surface parking lots and other accessory structures or uses.~~

NOTE: This section has been rewritten for clarity and to emphasize that only surface parking lots are eligible for the lesser flood protection standards.

NR 116.13(5)

(5) **STORAGE OF MATERIALS:** Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with s. 7.5. Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.

NR 116.13(6)

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<p>(6) PUBLIC UTILITIES, STREETS AND BRIDGES: All utilities, streets and bridges shall be designed to be compatible with comprehensive floodplain development plans; and</p> <p>(a) When failure of public utilities, streets and bridges would endanger public health or safety, or where such facilities are deemed essential, construction of and substantial improvements to such facilities may only be permitted if they are floodproofed in compliance with s. 7.5 to the flood protection elevation;</p> <p>(b) Minor roads or nonessential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.</p>		NR 116.13(7)
<p>(7) SEWAGE SYSTEMS: All on-site sewage disposal systems shall be floodproofed, <u>pursuant to s. 7.5</u>, to the flood protection elevation and shall meet the provisions of all local ordinances and ch. COMM 83, Wis. Adm. Code.</p>	<p><u>NOTE:</u> Language added to emphasize that minimum floodproofing requirements must be met.</p>	NR 116.13(8)
<p>(8) WELLS: All wells shall be floodproofed, <u>pursuant to s. 7.5</u>, to the flood protection elevation and shall meet the provisions of chs. NR 811 and NR 812, Wis. Adm. Code.</p>	<p><u>NOTE:</u> Language added to emphasize that minimum floodproofing requirements must be met</p>	NR 116.13(9)
<p>(9) SOLID WASTE DISPOSAL SITES: Disposal of solid or hazardous waste is prohibited in floodfringe areas.</p>		NR 116.13(10)
<p>(10) DEPOSITION OF MATERIALS: Any deposited material must meet all the provisions of this ordinance.</p>		NR 116.13(11)

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW****(11) MOBILE HOMES AND MANUFACTURED HOMES**

NOTE: The title has been changed because the federal government only uses the term "manufactured home."

(a) Owners or operators of all ~~mobile~~/manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.

NR 116.13(2)

(b) In existing ~~mobile~~ manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes ~~and recreational vehicles that remain on site more than 180 days, or are unlicensed or not ready for highway use and which are placed or improved on a site located in the floodplain~~ shall:

NOTE: The recreational vehicle language has been moved to a separate section below and renamed "mobile recreational vehicle", which is the term used in ch. NR 116.

1. have the lowest floor elevated to the flood protection elevation; and

2. be anchored so they do not float, collapse or move laterally during a flood.

(c) Outside of existing manufactured home parks, including new ~~mobile~~ manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved ~~mobile~~/manufactured homes ~~and recreational vehicles that remain on site more than 180 days, or are unlicensed or not ready for highway use and which are placed or improved on a site located in the floodplain~~ shall meet the residential development standards for the floodfringe in s. 4.3(2).

(12) MOBILE RECREATIONAL VEHICLES

All mobile recreational vehicles that are on site for

NOTE: Park model units cannot be regulated as a mobile

NR 116.13(3m)(c)

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180 consecutive days or more or are not fully licensed and ready for highway use shall meet the elevation and anchoring requirements in s. 4.3 (11)(b) and (c). A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

5.0 GENERAL FLOODPLAIN DISTRICT (GFP)**5.1 APPLICABILITY**

~~The provisions for this district shall apply to all floodplains for which regional flood data is not available. As adequate data becomes available, appropriate floodway and floodfringe districts shall be delineated.~~ The provisions for this district shall apply to all floodplains for which flood profiles are not available or where flood profiles are available but floodways have not been delineated. Floodway and floodfringe districts shall be delineated when adequate data is available.

5.2 PERMITTED USES

Pursuant to s. 5.4, it shall be determined whether the proposed use is located within a floodway or floodfringe area.

Those uses permitted in floodway (s. 3.2) and

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recreational vehicle unless the campground operator can demonstrate that these units can be evacuated from the floodplain before the flooding event occurs.

NOTE: This section has been rewritten for clarity. For development proposed in areas where no engineering data is available, floodway and floodfringe limits must be determined to decide if the use can be permitted and what effect the development will have on flood heights and velocities.

NOTE: The general floodplain district applies to those areas where the floodway and floodfringe boundaries are not delineated and where there are no flood profiles. All development within the general floodplain district must have a detailed analysis to determine which regulations apply. S. 7.1(2) explains who is responsible for providing the information for the case-by-case analysis. The evaluation procedure is discussed in s. 5.4. In cases where it is determined that the delineation of the flood hazard zone is incorrect, follow the provisions of s. 1.5(4). If the area is incorrectly mapped, the map should be revised as specified in s. 8.0.

CODE / LAW

44 CFR 60.3(c)(14)

NR 116.14

NR 116.14

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floodfringe areas (s. 4.2) are allowed within the general floodplain district, according to the standards of s. 5.3, provided that all permits or certificates required under s. 7.1 have been issued.

5.3 STANDARDS FOR DEVELOPMENT IN THE GENERAL FLOODPLAIN DISTRICT

Section 3.0 applies to floodway areas, s. 4.0 applies to floodfringe areas. The rest of this ordinance applies to either district.

5.4 DETERMINING FLOODWAY AND FLOODFRINGE LIMITS

NR 116.14

Upon receiving an application for development within the general floodplain district, the zoning administrator shall:

(1) Require the applicant to submit two copies of an aerial photograph or a plan which shows the proposed development with respect to the general floodplain district limits, stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and flood proofing measures;

NR 116.20(2)

(2) Require the applicant to furnish any of the following information deemed necessary by the Department to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation and to determine floodway boundaries:

(a) A typical valley cross-section showing the stream channel, the floodplain adjoining each side of the channel, the cross-sectional area to be

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW**

occupied by the proposed development, and all historic high water information;

(b) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information;

(c) Profile showing the slope of the bottom of the channel or flow line of the stream;

(d) Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.

(3) Transmit one copy of the information described in subs. (1) and (2) to the Department Regional office along with a written request for technical assistance to establish regional flood elevations and, where applicable, floodway data. Where the provisions of s. 7.1(2)(c) apply, the applicant shall provide all required information and computations to delineate floodway boundaries and the effects of the project on flood elevations.

6.0 NONCONFORMING USES**6.1 GENERAL****(1) APPLICABILITY**

If these standards conform with s. 59.69(10), Stats., for counties or s. 62.23(7)(h), Stats., for cities and villages, they shall apply to all modifications or additions to any nonconforming use or structure and

s. 59.69 Stats.

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW**

to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto.

(2) The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this ordinance may continue subject to the following conditions:

- (a) No modification or addition to a nonconforming use or structure shall be permitted unless the modification or addition complies with this ordinance. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Ordinary maintenance repairs are not considered an extension, modification or addition; these include painting, decorating, paneling and the replacement of doors, windows and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Ordinary maintenance repairs do not include any costs associated with the repair of a damaged structure.

The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.

NOTE: When modifications or additions are made to nonconforming structures or structures with a nonconforming use, the fair market value of all labor and material costs associated with the addition – structural and nonstructural - count toward the 50% limit.

NOTE: The exclusions listed here for "ordinary maintenance repairs" pertain only to work done on existing legal nonconforming structures and structures with a nonconforming use.

NOTE: This provision was added to allow a small deck with an associated roof for safety purposes. This was a rule change to s. NR 116.15(1)(as), enacted in 2004.

NR 116.15(1)(a)

NR 116.15(1)(as)

- (b) If a nonconforming use or the use of a

NOTE: Not occupying a structure for 12 consecutive months

NR 116.15(1)(b)

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW**

nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance;

doesn't necessarily constitute "discontinuance." Please consult legal counsel for clarification of applicable case law.

(c) The municipality shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;

NOTE: This is both a state and federal requirement, since FEMA's substantial improvement provisions are based on the costs associated with modifications or additions to floodplain structures.

NR 116.19(2)(c)

(d) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 4.3(2). The cost of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph;

Note: Cost for elevating a nonconforming structure to provide flood protection have been exempted from the 50% rule.

NR 116.15 (1)(c)

(e) 1. Except as provided in subd. 2., if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds 50% of the structure's present

NOTE: The term "substantially" has been substituted for "so badly damaged" since it is the term defined and used in ch. NR 116.

Recent statutory changes allow non-flood damaged structures to be rebuilt without being in compliance with current zoning regulations if the federal requirements noted in subdivision 2. below are met. This section was modified to clarify the conditions that apply.

NR 116.15(1)(d)

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW**

equalized assessed value.

2. For nonconforming buildings that are damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building may be permitted in order to restore it after the nonflood disaster, provided that the nonconforming structure after repair or reconstruction meets the minimum requirements of regulations promulgated under 42 USC 4001 to 4129.

NOTE: The federal regulations cited here require the rebuilt structure to be at or above the BFE, to be properly floodproofed (including wells and waste disposal systems), to cause no increase in flood elevations at the site and to ensure that the flood carrying capacity of the watercourse is maintained.

s. 87.30 (1d) Stats.

(f) A nonconforming historic structure may be altered if the alteration will not preclude the structures continued designation as a historic structure, the alteration will comply with s. 3.3 (1), flood resistant materials are used, and construction practices and floodproofing methods that comply with s. 7.5 are used.

NOTE: This section reflects both minimum state and federal requirements for alterations to historic structures.

44 CFR, Part 60.6

Only structures listed on a recognized historic register are eligible for this exception.

6.2 FLOODWAY AREAS

(1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area, unless such modification or addition:

NOTE: These criteria for modifications or additions to nonconforming floodway uses and structures are more restrictive than those contained in the floodfringe nonconforming use provisions (s. 6.3) due to the increased hazards for floodway development.

NR 116.15(2)

(a) Has been granted a permit or variance which meets all ordinance requirements;

NR 116.15(2)(a)

(b) Meets the requirements of s. 6.1;

(c) Will not increase the obstruction to flood flows or regional flood height.

NR 116.15(2)(a)1.

(d) Any addition to the existing structure shall be floodproofed, pursuant to s. 7.5, by means other than the use of fill, to the flood protection elevation;

Note: The FEMA website – www.fema.gov – has information on alternative methods of floodproofing structures.

NR 116.15(2)(a)2.

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW**

- (e) The portions of the structure located below the regional flood elevation must be constructed of flood-resistant materials;
- (f) It must be designed to allow for the automatic entry of floodwaters; and
- (g) Its use must be limited to parking and/or limited storage.

(2) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances and ch. COMM 83, Wis. Adm. Code.

NOTE: No new on-site sewage disposal systems, or private water supply systems are allowed in the floodway district. Replacement of failing existing systems may be allowed providing they are replaced in compliance with ch. COMM 83.

NR 116.15(2)(b)

(3) No new well or modification to an existing well used to obtain potable water shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable requirements of all municipal ordinances and chs. NR 811 and NR 812, Wis. Adm. Code.

NR 116.15(2)(c)

6.3 FLOODFRINGE AREAS

NR 116.15(3)

(1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the municipality, and the modification or addition is placed on fill or floodproofed to the flood protection

NOTE: These are the general criteria for modifications or additions to nonconforming uses and structures in floodfringe areas, but the 50% cost limitations imposed by s. 6.1(2)(d) also apply. Where the 50% limit is exceeded in the floodfringe, the entire structure must be floodproofed or placed on fill. The cost limitations placed on modifications and additions to nonconforming floodfringe structures is a minimum requirement of the National Flood Insurance Program

NR 116.15(3)(a)

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW**

elevation in compliance with the standards for that particular use in ss. 4.3 and 7.5, except where s. 6.3(2) is applicable.

(NFIP).

(2) Where compliance with the provisions of sub. (1) would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Adjustment/Appeals, using the procedures established in s. 7.3, may grant a variance from those provisions of sub. (1) for a modification or addition, using the criteria listed below. Such modifications or additions, which are protected to elevations lower than the flood protection elevation, may be permitted if:

NOTE: These are the minimum standards that the board of adjustment/appeals must use in deciding whether or not to allow variances from the provisions contained in s. 4.3. Where a variance such as this is granted, the board must also inform the property owner in writing that increased flood insurance premiums may result.

NR 116.15(3)(b)

- (a) No floor is allowed below the regional flood elevation for residential or commercial structures;
- (b) Human lives are not endangered;
- (c) Public facilities, such as water or sewer, will not be installed;
- (d) Flood depths will not exceed two feet;
- (e) Flood velocities will not exceed two feet per second; and
- (f) The structure will not be used for storage of materials as described in s. 4.3(6).

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(3) If neither the provisions of par. (1) or (2) above can be met, one addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in the floodfringe, if the addition:

NR 116.15(3)(c)

(a) Meets all other regulations and will be granted by permit or variance;

(b) Does not exceed 60 square feet in area; and

(c) In combination with other previous modifications or additions to the building, does not exceed 50% of the present equalized assessed value of the building.

(4) All new private sewage disposal systems, or additions to, replacement, repair or maintenance of a private sewage disposal system, shall meet all the applicable provisions of all local ordinances and ch. COMM 83, Wis. Adm. Code.

NR 116.15(3)(d)

(5) All new wells, or additions to, replacement, repair or maintenance of a well, shall meet the applicable provisions of this ordinance and ch. NR 811 and NR 812, Wis. Adm. Code.

NR 116.15(3)(e)

7.0 ADMINISTRATION

Where a zoning administrator, planning agency or a board of adjustment/appeals has already been appointed to administer a zoning ordinance adopted under ss. 59.69, 59.692 or 62.23(7), Stats., these officials shall also administer this ordinance.

NOTE: Refer to ch. 2 of the Floodplain-Shoreland Management Guide for an explanation of the duties and responsibilities of the zoning administrator, board of adjustment/appeals and zoning agency. In addition, handbooks have been distributed by the Department to cities, villages and counties. Local training sessions can be arranged by contacting the Department.

NR 116.19(1)

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW****7.1 ZONING ADMINISTRATOR**

(1) The zoning administrator is authorized to administer this ordinance and shall have the following duties and powers:

NOTE: The zoning administrator duties include assisting applicants in preparing both their permit applications and, in cases where the application is denied and the applicant desires to appeal, assisting them in filling out the appeal form which is submitted to the board of adjustment/appeals for either a variance or an interpretation. When a written application for a permit is made the zoning administrator must inform the applicant in writing as to why a permit is denied.

NR 116.19(2)

(a) Advise applicants of the ordinance provisions, assist in preparing permit applications and appeals, and assure that the regional flood elevation for the proposed development is shown on all permit applications.

NR 116.19(2)(a)

(b) Issue permits and inspect properties for compliance with provisions of this ordinance and issue certificates of compliance where appropriate.

NR 116.19(2)(b)

(bm) Inspect all damaged floodplain structures and perform a substantial damage assessment to determine if substantial damage to the structures has occurred.

Note: Both state and federal regulations require that substantial damage inspections be performed.

(c) Keep records of all official actions such as:

NR 116.12(2)(c)

1. All permits issued, inspections made, and work approved;

2. Documentation of certified lowest floor and regional flood elevations for floodplain development;

NOTE: The Department recommends keeping a list of certified ground surface elevations which can be used to determine if building floor and ground surface elevations are in compliance with the ordinance elevation standards.

3. Records of water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures, including changes, appeals, variances and amendments.

4. All substantial damage assessment reports for

NOTE: This was added to highlight the importance of documenting

44 CFR 60.3

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW**

floodplain structures.

damage assessments.

(d) Submit copies of the following items to the Department Regional office:

NR 116.19(2)(d)

1. Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;

NOTE: Sending this information to the Department is critical if the ordinance text or map is being amended and where variances from the flood protection elevation or development standards are sought. Where additional technical assistance is needed or requested, contact the local Department Regional office in addition to submitting the information to them for their review.

NR 116.20(2)(d)

2. Copies of any case-by-case analyses, and any other information required by the Department including an annual summary of the number and types of floodplain zoning actions taken.

3. Copies of substantial damage assessments performed and all related correspondence concerning the assessments.

NOTE: This was added to correspond to the new substantial damage language.

44 CFR 60.3

Note: Information on substantial damage assessments is available on the DNR website – <http://dnr.wi.gov/org/water/wm/dsfm/flood/title.htm>

(e) Investigate, prepare reports, and report violations of this ordinance to the municipal zoning agency and attorney for prosecution. Copies of the reports shall also be sent to the Department Regional office.

NOTE: To enforce the ordinance and prosecute a violation, the prosecutor will need a case record of all relevant information, including photographs, written and taped testimony, records of other hearings concerning the violation and any other pertinent information which can be obtained. The zoning administrator cannot be too careful or too meticulous in preparing materials which may eventually be used in an enforcement action.

NR 116.20(4)

(f) Submit copies of text and map amendments and biennial reports to the FEMA Regional office.

44 CFR 60.3

(2) LAND USE PERMIT

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A land use permit shall be obtained before any new development or any repair or change in the use of a building or structure, including sewer and water facilities, may be initiated. Application to the zoning administrator shall include:

NOTE: The ZA must first determine which flood zone the site is in. If floodplain boundaries are not established, a case-by-case analysis must be done so the structure can be adequately protected from flooding.

The elevation of the lowest floor, adjacent grade and any fill is required using National Geodetic and Vertical Datum. The ZA can then compare that elevation with the flood profile without having to make a conversion to a local or assumed datum.

All required permits must be applied for and issued before any floodplain development can be allowed. If no permit is issued, the applicant would be in violation of the ordinance since a permit was never obtained, even though the use and the construction of the structure may be in compliance with the minimum development standards.

NR 116.20(1)

(a) GENERAL INFORMATION

NR 116.20(2)

1. Name and address of the applicant, property owner and contractor;

2. Legal description, proposed use, and whether it is new construction or a modification;

(b) SITE DEVELOPMENT PLAN

NR 116.20(2)

A site plan drawn to scale shall be submitted with the permit application form and shall contain:

1. Location, dimensions, area and elevation of the lot;

2. Location of the ordinary highwater mark of any abutting navigable waterways;

3. Location of any structures with distances measured from the lot lines and street center lines;

4. Location of any existing or proposed on-site

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sewage systems or private water supply systems;

5. Location and elevation of existing or future access roads;

6. Location of floodplain and floodway limits as determined from the official floodplain zoning maps;

7. The elevation of the lowest floor of proposed buildings and any fill using National Geodetic and Vertical Datum (NGVD);

8. Data to determine the regional flood elevation in NGVD at the location of the development and to determine whether or not the requirements of s. 3.0 or 4.0 are met; and

9. Data sufficient to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to s. 2.1. This may include any of the information noted in s. 3.3(1).

(c) **DATA REQUIREMENTS TO ANALYZE DEVELOPMENTS**

NR 116.20(2)(a)4.

The applicant shall provide all survey data and computations required to show the effects of the project on flood heights, velocities and floodplain storage, for all subdivision proposals, as "subdivision" is defined in ch. 236, Stats., and other proposed developments exceeding 5 acres in area or where the estimated cost exceeds \$125,000. The applicant shall provide:

NOTE: The NFIP requires that "all subdivision proposals and other proposed new developments greater than 50 lots or 5 acres, whichever is less, include base flood elevation data." When subdivisions or other development is planned in a flood-prone area, FEMA standards require that (1) all such proposals minimize flood damage within the flood-prone area, (2) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and (3) adequate drainage is provided to reduce exposure to flood hazards.

Section 236.02(8), Stats., defines "subdivision" as the division of a

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW**

1. An analysis of the effect of the development on the regional flood profile, velocity of flow and floodplain storage capacity;
2. A map showing location and details of vehicular access to lands outside the floodplain; and
3. A surface drainage plan showing how flood damage will be minimized.
4. The estimated cost of the proposal shall include all structural development, landscaping, access and road development, utilities, and other pertinent items, but need not include land costs.

tract of land where five or more parcels or building sites of 1½ acres each or less in area are created by a single division or by successive divisions within a period of five years.

NOTE: Subd. 2 was removed

(d) EXPIRATION

All permits issued under the authority of this ordinance shall expire _____ days after issuance.

NOTE: The reference to 180 days was removed.

(3) CERTIFICATE OF COMPLIANCE

NR 116.20(3)

Except where no permit is required, no land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the zoning administrator, subject to the following provisions:

- (a) The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this ordinance;

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- (b) Application for such certificate shall be concurrent with the application for a permit;
- (c) If all ordinance provisions are met, the certificate of compliance shall be issued within 10 days after written notification that the permitted work is completed;
- (d) The applicant shall submit a certification signed by a registered professional engineer or registered land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or registered architect that floodproofing measures meet the requirements of s. 7.5.

(4) OTHER PERMITS

The applicant must secure all necessary permits from federal, state, and local agencies, including those required by the U.S. Army Corps of Engineers under s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344.

NOTE: The Corps must be consulted for all development within the navigable portion of all bodies of water including adjacent wetland areas. The ZA should advise applicants to contact the Corps before the municipality issues a permit. Permits from the Department, under ch. 30 or 31, Stats., are obtained from the local DNR office.

7.2 ZONING AGENCY

NOTE: In many villages, the board of trustees also serves as the planning or zoning agency. It is permissible for both a county board of supervisors and a city council to hold hearings and take direct action on zoning map and text amendments. Procedures in ss. 59.69 and 62.23, Stats., refer zoning matters from the governing body to the committee responsible for the zoning functions (generally the zoning committee or agency). This committee holds the hearing, takes testimony, records findings of fact and makes recommendations to the governing body for final action on amendments, or to the Board for variances or other appeals. See s. 8.2 and the explanations for the procedures to follow when processing a petition for a map or text amendment. The planning or zoning agency oversees the zoning administrator's duties, and recommends action to the governing Board or Council for text or map amendments.

NR 116.19(3)

(1) The _____ (zoning agency or planning committee) shall:

(a) oversee the functions of the office of the zoning administrator; and

(b) review and advise the Governing body on all proposed amendments to this ordinance, maps and text.

(2) This zoning agency shall not

(a) grant variances to the terms of the ordinance in place of action by the Board of Adjustment/Appeals; or

s. 59.692 Stats.

(b) amend the text or zoning maps in place of official action by the Governing body.

7.3 BOARD OF ADJUSTMENT/APPEALS

The Board of Adjustment/Appeals, created under s. 59.694, Stats., for counties or s. 62.23(7)(e), Stats., for cities or villages, is hereby authorized or shall be appointed to act for the purposes of this ordinance. The Board shall exercise the powers conferred by Wisconsin Statutes and adopt rules for the conduct of business. The zoning administrator may not be the secretary of the Board.

NOTE: Under s. 59.694, Stats., the county board of supervisors is required to adopt rules for the conduct of board of adjustment meetings. In cities and villages, under s. 62.23(7)(e)3, Wis. Stats., the Board of Appeals itself is required to adopt rules for its meetings.

s. 59.694 Stats.

The Board hears appeals from persons who disagree with the interpretation of the floodplain ordinance or feel that they can demonstrate hardship and be allowed to deviate from the development standards. The Board has two primary functions: (1) It can interpret the meaning of the ordinance and its provisions as well as the location of district boundaries in dispute; and (2) It is the agency designated by statute to issue variances to provide relief from the strict requirements of the ordinance.

Before the Board can grant a variance, it must be clearly demonstrated and documented how the decision was made and in

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what specific way hardship was shown. (Refer to the criteria in the Floodplain-Shoreland Guide for what legally constitutes unnecessary hardships.)

If this ordinance is more restrictive than the underlying land use zoning ordinance, the most restrictive provisions in each ordinance must always be applied.

(1) Powers and Duties: The Board of Adjustment/Appeals shall:

(a) Appeals - Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance.

NR 116.19(4)(a)

(b) Boundary Disputes - Hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map.

(c) Variances - Hear and decide, upon appeal, variances from the ordinance standards.

NR 116.19(4)(c)

(2) APPEALS TO THE BOARD

(a) Appeals to the board may be taken by any person aggrieved, or by any officer or department of the municipality affected by any decision of the zoning administrator or other administrative officer. Such appeal shall be taken within 30 days unless otherwise provided by the rules of the board, by filing with the official whose decision is in question, and with the board, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the board all records regarding the matter appealed.

NR 116.21(5)

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW****(b) NOTICE AND HEARING FOR APPEALS INCLUDING VARIANCES**

NOTE: This establishes the procedures to be followed by the Board in considering appeals from decisions made by the ZA. The final decision should include notice that the applicant may appeal the Board's decision to a court of record. Failure to follow the correct zoning appeal procedure may result in the dismissal of an action taken against the municipality, the ZA, or the Board.

ss. 59.694,
62.23(7)(e), Stats.

1. Notice - The board shall:

NR 116.20(2)(c)

- a. Fix a reasonable time for the hearing;
- b. Publish adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place and subject of the hearing;
- c. Assure that notice shall be mailed to the parties in interest and the Department Regional office at least 10 days in advance of the hearing.

NR 116.20(2)(d)

2. Hearing - Any party may appear in person or by agent or attorney. The board shall:

- a. Resolve boundary disputes according to s. 7.3(3).
- b. Decide variance applications according to s. 7.3(4).
- c. Decide appeals of permit denials according to s. 7.4.

(c) DECISION: The final decision regarding the appeal or variance application shall:

- 1. Be made within a reasonable time;
- 2. Be sent to the Department Regional office within 10 days of the decision;

NR 116.19(4)(e)

NR 116.20(2)(d)

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3. Be a written determination signed by the chairman or secretary of the Board;		NR 116.19(4)(e)
4. State the specific facts which are the basis for the Board's decision;		NR 116.21(5)
5. Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the variance application;		NR 116.21(5)
6. Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board proceedings.		NR 116.21(5)
(3) <u>BOUNDARY DISPUTES</u>		
The following procedure shall be used by the Board in hearing disputes concerning floodplain district boundaries:	<u>NOTE:</u> Where flood elevations are available, those elevations are the governing factor. The applicant must submit the elevation of the property and cross-sections showing where that elevation appears on the flood profile. A determination can then be made by the zoning administrator according to s. 1.5(4). If the map boundaries are in error, the Board should direct the applicant or the zoning agency to petition the governing body for a map amendment. When the amendment action is begun, both the Department and FEMA should be informed. Please refer to the amendment procedures in the Floodplain-Shoreland Guide.	
(a) If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined.		NR 116.11
(b) In all cases, the person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the		

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Board.

(c) If the boundary is incorrectly mapped, the Board should notify the zoning committee or the person contesting the boundary location to petition the governing body for a map amendment according to s. 8.0.

(4) VARIANCE

(a) The Board may, upon appeal, grant a variance from the standards of this ordinance if an applicant convincingly demonstrates that:

NOTE: Use variances are not allowed under floodplain zoning; the applicant would have to apply for a rezoning to build in the floodway. No variance from the flood protection elevation is allowed due to the danger to human life, health and property. Floodfringe sites can be developed at regional flood elevation if they are properly floodproofed and the standards in s. 6.3(2) are met.

NR 116.21(4)

When a variance is granted, the applicant must be informed in writing of the risks to life and property and that flood insurance premiums will go up. A copy of that statement should be attached to the file. The ZA should counsel the applicant to contact their insurance agent to find the most cost-effective elevation to build to.

1. Literal enforcement of the ordinance provisions will cause unnecessary hardship;

2. The hardship is due to adoption of the floodplain ordinance and unique property conditions. If the conditions are common to adjacent lots or premises, the ordinance or map would need to be amended;

Ss. 59.69,
62.23(7)(e), Stats.

3. The variance is not contrary to the public interest; and

4. The variance is consistent with the purpose of this ordinance in s. 1.3.

(b) In addition to the criteria in par. (a), to qualify for a variance under FEMA regulations, the

NOTE: These standards are derived from the regulations in Part 60.6, Code of Federal Regulations.

44 CFR 60.6

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following criteria must be met

1. The variance may not cause any increase in the regional flood elevation;
2. Variances can only be granted for lots that are less than one-half acre and are contiguous to existing structures constructed below the RFE;
3. Variances shall only be granted upon a showing of good and sufficient cause; shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances; shall not increase costs for rescue and relief efforts; and shall not be contrary to the purpose of the ordinance.

NOTE: FEMA would require sufficient justification for larger lot sizes.

(c) A variance shall not:

NR 116.21(4)

1. Grant, extend or increase any use prohibited in the zoning district.
2. Be granted for a hardship based solely on an economic gain or loss.
3. Be granted for a hardship which is self-created.
4. Damage the rights or property values of other persons in the area.

~~Allow any floor of a basement or crawlway below the regional flood elevation for residential or commercial structures.~~

NOTE: A recent Wisconsin Supreme Court decision struck down this provision.

5. Allow actions without the amendments to this ordinance or map(s) required in s. 8.1.
6. Allow any alteration of an historic structure,

44 CFR 60.6(a)

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including its use, which would preclude its continued designation as an historic structure.

(d) When a floodplain variance is granted the Board shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property. A copy shall be maintained with the variance record.

44 CFR 60.6(a)(5)

7.4 TO REVIEW APPEALS OF PERMIT DENIALS

(1) The Zoning Agency identified in s. 7.2 or the Board identified in s. 7.3 shall review all data related to the appeal. This may include:

NR 116.21(5)

(a) Permit application data listed in s. 7.1(2).

(b) Floodway/floodfringe determination data in s. 5.4.

(c) Data listed in s. 3.3(1)(b)2. where the applicant has not submitted this information to the zoning administrator.

(a) Other data submitted with the application, or submitted to the Board with the appeal.

(2) For appeals of all denied permits the Board shall:

NR 116.19(4)

(a) Follow the procedures of s. 7.3;

(b) Consider zoning agency recommendations; and

(c) Either uphold the denial or grant the appeal.

(3) For appeals concerning increases in regional

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flood elevation the Board shall:

(a) Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases equal to or greater than 0.01 foot may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners.

NOTE: To overturn the ZA's denial, the Board or Zoning Agency must review the data supplied by the applicant to the ZA with the permit application and determine if the denial was correct. (The Zoning Agency in s. 7.2 can review and recommend action to the Board.) The Board must uphold the denial if insufficient data was provided. Where sufficient data was provided, the Board may only overturn the denial if the applicant provides proof that the project will not cause 0.01 foot or greater increase in regional flood height. If review of all data shows the ZA correctly denied the permit due to an increase in flood height, the Board should notify the applicant that amendments to the profile and map are needed to allow the development. Such amendments can be approved only if legal arrangements are made with all adversely affected property owners. Rezoning to allow a use not permitted by the ordinance requires full analysis and amendments to the map and profiles.

(b) Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase equal to or greater than 0.01 foot provided no other reasons for denial exist.

7.5 FLOODPROOFING

(1) No permit or variance shall be issued until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to the flood protection elevation.

NOTE: All new structures or additions to existing structures must be watertight or dry floodproofed to the flood protection elevation. The lowest floor or basement floor must either be elevated or floodproofed to the flood protection elevation in order to maintain these standards. Before the ZA can grant a permit involving floodproofing requirements, the applicant must submit a certification signed by a registered professional engineer or architect that the design for floodproofing measures is adequate to protect the development to the flood protection elevation.

NR 116.16(2)

(2) Floodproofing measures shall be designed to:

?????????

NR 116.16(1)

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW**

(a) Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;

For additional information on design standards for floodproofing buildings and structures, please consult the U.S. Army Corps of Engineers web page, www.usace.army.mil or the FEMA web page, www.fema.gov.

(b) Protect structures to the flood protection elevation;

(c) Anchor structures to foundations to resist flotation and lateral movement; and

(d) Insure that structural walls and floors are watertight to the flood protection elevation, and the interior remains completely dry during flooding without human intervention.

For more information addressing the importance of protecting structures to mitigate flood damages see, "Design Guidelines for Flood Damage Reduction," dated October 1981, prepared for FEMA by the American Institute of Architects (AIA) Research Corporation, 1735 New York Avenue N.W.; Washington, D.C. 20006.

(3) Floodproofing measures could include:

NR 116.16(2)(a)

(a) Reinforcing walls and floors to resist rupture or collapse caused by water pressure or floating debris.

(b) Adding mass or weight to prevent flotation.

(c) Placing essential utilities above the flood protection elevation.

(d) Installing surface or subsurface drainage systems to relieve foundation wall and basement floor pressures.

(e) Constructing water supply wells and waste treatment systems to prevent the entry of flood waters.

(f) Putting cutoff valves on sewer lines or eliminating gravity flow basement drains.

MODEL ORDINANCE PROVISIONS**BACKGROUND / NOTES****CODE / LAW****7.6 PUBLIC INFORMATION**

NR 116.20 (5)

- (1) The municipality may place marks to show the depth of inundation during the regional flood.
- (2) All floodplain maps, engineering data and regulations shall be available and widely distributed.
- (3) All real estate transfers of floodplain property should show what floodplain zoning district the real property is in.

8.0 AMENDMENTS**8.1 GENERAL**

The governing body may change or supplement the floodplain zoning district boundaries and this ordinance in the manner provided by law. Actions which require an amendment include, but are not limited to, the following:

NOTE: Amendments are required when development or property is: NR 116.21(6)
 a) being rezoned; b) causing 0.01 foot increase or more in flood height; or c) obstructing floodway flows.

Rezoning may be from floodway to floodfringe to allow a use prohibited in the floodway, or it may be from floodfringe to non-floodplain to allow a structure to be removed from the floodplain provided the property owner secures a federal Letter of Map Change to complete the rezoning. This are explained in the Floodplain - Shoreland Guidebook. Land can only be removed from the floodplain by filling the entire parcel two feet above the RFE and contiguous to lands outside the floodplain, according to s. NR 116.18. Development below the RFE cannot be allowed for residential or commercial development. Other development can be, provided it's completely dry floodproofed to the flood protection elevation without human intervention.

An amendment is also required for any change made to the ordinance text, the official map, or corresponding profiles. The Wisconsin enabling statutes for cities and villages, s. 62.23(7)(d), and for counties, s. 59.69, establish specific zoning ordinance amendment procedures. These procedures must be followed for all amendments made to this ordinance; failure to do so could result in the amendment being declared invalid.

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- (1) Any change to the official floodplain zoning map, including the floodway line or boundary of any floodplain area.
- (2) Correction of discrepancies between the water surface profiles and floodplain zoning maps.
- (3) Any fill in the floodplain which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain.
- (4) Any fill or floodplain encroachment that obstructs flow, increasing regional flood height 0.01 foot or more.
- (5) Any upgrade to a floodplain zoning ordinance text required by s. NR 116.05, Wis. Adm. Code, or otherwise required by law, or for changes by the municipality.
- (6) All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.

NOTE: FEMA must review and approve all changes to a FIRM.

Note: Consult the FEMA web site - www.fema.gov
- for a current map change fee schedule.

8.2 PROCEDURES

Ordinance amendments may be made upon petition of any interested party according to the provisions of s. 62.23, Stats., for cities and villages, or s. 59.69, Stats., for counties. Such petitions shall include all necessary data required by ss. 5.4 and 7.1(2).

NR 116.21(6)(b)

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(1) The proposed amendment shall be referred to the zoning agency for a public hearing and recommendation to the governing body. The amendment and notice of public hearing shall be submitted to the Department Regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of s. 62.23, Stats., for cities and villages or s. 59.69, Stats., for counties.

NR 116.21(6)(c)

(2) No amendments shall become effective until reviewed and approved by the Department.

NR 116.21(6)(e)

(3) All persons petitioning for a map amendment that obstructs flow, increasing regional flood height 0.01 foot or more, shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the governing body.

(4) For amendments in areas with no water surface profiles, the zoning agency or board shall consider data submitted by the Department, the zoning administrator's visual on-site inspections and other available information. (See s. 1.5(4).)

9.0 ENFORCEMENT AND PENALTIES

Any violation of the provisions of this ordinance by any person shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the municipality a penalty of not less than \$_____ and not more than \$_____, together with a taxable cost of such action. Each day of continued violation shall constitute a separate

NOTE: Wisconsin zoning law provides for the disposition of violations through forfeitures, injunctive relief (correction of the violation) or both. Forfeiture may be effective against relatively small violations. Injunctions and abatement may be the necessary steps where more egregious violations are involved, particularly if those violations will cause an increase in flood elevations affecting other property owners.

NR 116.20(4)

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offense. Every violation of this ordinance is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to s. 87.30, Stats.

10.0 DEFINITIONS

Unless specifically defined below, words and phrases used in this ordinance shall have the same meaning as they have at common law and to give this ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive, "shall" is mandatory and not discretionary.

1) "A ZONES" - Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.

2) "ACCESSORY STRUCTURE OR USE" - A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building. ~~A detached subordinate structure or a use which is clearly incidental to and customarily found in connection with the principal structure or use to which it is related, and which is located on the same lot as that of the principal structure or use.~~

NOTE: Definition modified to conform to the definition used in NR 116.

3) "BASE FLOOD" - Means the flood having a one percent chance of being equaled or exceeded in

NOTE: Definition added to reflect flood elevation terminology used on FIRM's.

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any given year, as published by FEMA as part of a FIS and depicted on a FIRM.

4) "BASEMENT" - Any enclosed area of a building having its floor sub-grade, i.e., below ground level, on all sides.

5) "BUILDING" - See STRUCTURE.

6) "BULKHEAD LINE" - A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to s. 30.11, Stats., and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.

7) "CAMPGROUND" Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by 4 or more camping units, or which is advertised or represented as a camping area.

NOTE: Definition added

8) "CAMPING UNIT" - Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a tent, camping trailer, motor home, bus, van, pick-up truck or other mobile recreational vehicle.

NOTE: Definition added that is used in NR 116.

9) "CERTIFICATE OF COMPLIANCE" – A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.

10) "CHANNEL" – A natural or artificial watercourse with definite bed and banks to confine

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and conduct normal flow of water.

11)"CRAWLWAYS" OR "CRAWL SPACE" - An enclosed area below the first usable floor of a building, generally less than five (5) feet in height, used for limited access to plumbing and electrical utilities.

12) "DECK" – An unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.

NOTE: Definition added for clarification

13)"DEPARTMENT" - The Wisconsin Department of Natural Resources.

14)"DEVELOPMENT" - Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

NOTE: Clause added to clarify that repairs are a type of development that is regulated under this ordinance.

15)"DRYLAND ACCESS" - A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.

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16)"ENCROACHMENT" - Any fill, structure, equipment, building, use or development in the floodway.

17)"EXISTING MANUFACTURED HOME PARK OR SUBDIVISION" - A parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this ordinance. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.

18)"EXPANSION TO EXISTING ~~MOBILE~~ MANUFACTURED HOME PARK" - The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring of concrete pads.

19)"FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)" - The federal agency that administers the National Flood Insurance Program.

20)"FLOOD INSURANCE RATE MAP" (FIRM) - A map of a community on which the Federal Insurance Administration has delineated both special flood hazard areas (the floodplain) and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.

NOTE: Definition added which is used throughout this ordinance.

21)"FLOOD" or "FLOODING" – A general and temporary condition of partial or complete

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inundation of normally dry land areas caused by one of the following conditions:

- ✓ The overflow or rise of inland waters,
- ✓ The rapid accumulation or runoff of surface waters from any source,
- ✓ The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior, or
- ✓ The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.

22)"FLOOD FREQUENCY" - The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent (%) chance of occurring in any given year.

23)"FLOODFRINGE" - That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and is generally associated with standing water rather than flowing water.

24)"FLOOD HAZARD BOUNDARY MAP" - A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until

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superseded by a Flood Insurance Study and a Flood Insurance Rate Map.

25)"FLOOD INSURANCE STUDY" - A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A-Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

26)"FLOODPLAIN" - Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe, and may include other designated floodplain areas for regulatory purposes.

27)"FLOODPLAIN ISLAND" - A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.

28)"FLOODPLAIN MANAGEMENT" - Policy and procedures to insure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.

29)"FLOOD PROFILE" - A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.

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30)"FLOODPROOFING" - Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.

31)"FLOOD PROTECTION ELEVATION" - An elevation of two feet of freeboard above the water surface profile elevation designated for the regional flood. (Also see: FREEBOARD.)

32)"FLOOD STORAGE" - Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.

33)"FLOODWAY" - The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

34)"FREEBOARD" - A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for many factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggradation of the river or stream bed.

35)"HABITABLE BUILDINGS STRUCTURE" - Any ~~building~~ building structure or portion thereof used or designed for human habitation.

NOTE: Structure is the term commonly used in this ordinance and in NR 116.

36)"HEARING NOTICE" - Publication or posting

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satisfying the requirements of Ch. 985, Stats. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice, exceeding these minimums.

37)"HIGH FLOOD DAMAGE POTENTIAL" –

Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.

38)"HISTORIC STRUCTURE" - Any structure that is either:

- ✓ Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register,
- ✓ Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district,
- ✓ Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior, or
- ✓ Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either

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by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.

9) "INCREASE IN REGIONAL FLOOD

HEIGHT" - A calculated upward rise in the regional flood elevation, equal to or greater than 0.01 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

10) "LAND USE" - Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT.)

39) MANUFACTURED HOME" - A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities.. The term "manufactured home" does not include a "mobile recreational vehicle."

NOTE: The "term mobile home is no longer used within state or federal regulations. A separate definition for mobile recreational vehicles has been added below.

40) "MOBILE RECREATIONAL VEHICLE" - A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model

NOTE: This combines elements of the definitions found in NR 116 and in the federal codes.

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homes, do not fall within the definition of “mobile recreational vehicle.”

41) "MUNICIPALITY" or "MUNICIPAL" - The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.

42) "NGVD" or "NATIONAL GEODETIC VERTICAL DATUM" - Elevations referenced to mean sea level datum, 1929 adjustment.

43) "NEW CONSTRUCTION" - For floodplain management purposes, "new construction" means structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

NOTE: Definition from federal code added.

44) "NONCONFORMING STRUCTURE" - An existing lawful structure or building which is not in conformity with the provisions of this ordinance for the area of the floodplain which it occupies. (For example, the use of an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)

45) "NONCONFORMING USE" - An existing lawful use or accessory use of a structure or building which is not in conformity with the

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provisions of this ordinance for the area of the floodplain which it occupies. (Such as a residence in the floodway.)

46) "OBSTRUCTION TO FLOW" - Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.

47) "OFFICIAL FLOODPLAIN ZONING MAP" - That map, adopted and made part of this ordinance, as described in s. 1.5(2), which has been approved by the Department and FEMA.

48) "OPEN SPACE USE" - Those uses having a relatively low flood damage potential and not involving structures.

49) "ORDINARY HIGHWATER MARK" - The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

50) "PERSON" – An individual, or group of individuals, corporation, partnership, association, municipality or state agency.

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51) "PRIVATE SEWAGE SYSTEM" - A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Commerce, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.

52) "PUBLIC UTILITIES" - Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.

53) "REASONABLY SAFE FROM FLOODING" - Means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

NOTE: Definition from federal code added.

54) "REGIONAL FLOOD" - A flood determined to be representative of large floods known to have occurred in Wisconsin or which may be expected to occur on a particular lake, river or stream once in every 100 years. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE.

NOTE: Revised for clarity and to emphasize the relationship between "RFE" and "BFE."

55) "START OF CONSTRUCTION" - The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit

NOTE: Definition from federal code added.

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date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

56) "STRUCTURE" - Any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.

57) "SUBDIVISION" - Has the meaning given in s. 236.02(12), Wis. Stats.

57) "SUBSTANTIAL DAMAGE" - Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.

NOTE: Definition from NR 116 as used for administration of nonconforming regulations.

58) "SUBSTANTIAL IMPROVEMENT"

NOTE: Substantial damage definition substitutes for this definition

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~~Any structural repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the present equalized assessed value of the structure either before the improvement or repair is started, or if the structure has been damaged, and is being restored, before the damage occurred. The term does not, however, include either:~~

~~—— (a) — Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which existed before the improvement began, was identified by a municipal official and are necessary to assure safe living conditions,~~

~~—— (b) — Any alteration of a designated historical structure or site documented as deserving preservation by the Wisconsin State Historical Society, or listed on the National Register of Historic Places provided the alteration will not preclude the structure's continued designation as an historical structure~~

~~———— Ordinary maintenance repairs are not structural repairs, modifications or additions. Such repairs include painting, decorating, paneling, and the replacement of doors, windows, and other nonstructural components. "Substantial improvement" begins when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.~~

58) "UNNECESSARY HARDSHIP" - Where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas,

and has the same force and effect.

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setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance.

59) "VARIANCE" - An authorization by the board of adjustment or appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.

60) "VIOLATION" - The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

NOTE: Definition from federal code added.

61) "WATERSHED" - The entire region contributing runoff or surface water to a watercourse or body of water.

62) "WATER SURFACE PROFILE" - A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

63) "WELL" – means an excavation or opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.